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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

10/067,460

02/04/2002

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043978-019000

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EXAMINER

NGUYEN BA, HOANG VU A

ART UNIT

PAPER NUMBER

2623

MAIL DATE

DELIVERY MODE

10/24/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/067,460

Applicant(s)

SEDLAK ET AL.

Examiner

Hoang-Vu A. Nguyen-Ba

Art Unit

2623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_:
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This action is responsive to the amendment filed August 17, 2007.
2. Claims 1-15 remain pending. Claims 1, 5, 9 and 15 are independent claims.

### ***Response to Amendments***

3. Per Applicants' request, Claims 1, 3-5, 9 and 13-15 have been amended.
4. The objection to the declaration is withdrawn because, as indicated by Applicants, it does indeed identify the mailing address of each inventor.
5. The objection to the specification is withdrawn in view of Applicants' amendment to the title to make it clearly indicative of the invention to which the claims are directed.
6. The objection to Claims 13-15 is withdrawn in view of Applicants' amendments to these claims to correct the identified minor informalities.
7. The rejection of Claims 3 and 5 under 35 U.S.C. § 112, second paragraph is withdrawn in view of Applicants' amendments to these claims to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

### ***Response to Arguments***

8. Applicants' arguments in the Remarks at pp. 8-9 have been fully considered but are deemed not persuasive. Following is an examiner's response to Applicants' arguments.

#### **Applicants' arguments:**

Claims 1-15 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,572,442 ("Schulhof").

The present application relates generally to a system and method for transmitting requested content items in a broadband transmission system. Requests are received for a plurality of content items on an upstream path. A list of content items is created and a request count for each content item is created. The requests are sorted using the count. The content items with a higher count are transmitted more frequently than content items with a lower count.

The transmitted content items are broadcast via a downstream requesting transceiver.

In contrast, Schulhof discloses a content delivery system that delivers requested audio content for storage at a requesting station. (Col. 5, ll. 53-67). The station may be then transformed to a portable storage medium 50 which may then be mated with a mobile docking station 62 for playback such as in a radio 46. (Col. 11, ll. 44-64). Schulhof does not disclose immediate broadcast of the requested content as in the present disclosure.

In order to distinguish Schulhof, Applicant has amended claims 1, 5, 9 and 15 to require that the transmitted content items are broadcast by the downstream requesting transceiver. These claims are allowable over Schulhof because Schulhof only discloses storing the transmitted content items to a requesting station. The requesting station only allows storage of the transmitted content items, not the broadcast of the content items as now required by these claims. Applicant respectfully submits that the amended claims and their dependents are allowable over Schulhof.

Examiner's response:

Contrary to Applicants' arguments, Schulhof does indeed broadcast a program(s) requested by subscriber(s). See 10:52 – 11:41.

Accordingly, the rejection of Claims 1-15 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,572,442 to Schulhof is still proper and maintained.

***Claim Rejections – 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejection under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-15 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,572,442 to Schulhof et al. ("Schulhof").

**Claim 1 (Currently Amended)**

Schulhof discloses *a method for transmitting requested content items in a broadband transmission system comprising:*

*receiving requests for a plurality of content items on an upstream path of said broadband transmission system (see at least 10:35-41);*  
*creating a list of said content items (see at least 10:35-41);*  
*creating a request count for each content item of said plurality of content items (see at least 10:35 – 11:5);*  
*sorting said requests using said count (see at least 10:35 – 11:5); and*  
*transmitting content items with a higher count more frequently than content items with a lower count (see at least 10:35 – 11:5); and*  
*broadcasting the transmitted content items via a downstream requesting transceiver (see at least 10:52 – 11:41).*

## **Claim 2**

The rejection of base claim 1 is incorporated. Schulhof further discloses *wherein said request count is the number of requests received during a predefined time period for each content item of said plurality of content items (see at least 10:52 – 11:5).*

## **Claim 3 (Currently Amended)**

The rejection of base claim 1 is incorporated. Schulhof further discloses *removing said content item from said list of content items if said count is equal to or less than a predetermined ~~number~~ content access count (see at least 11:10 – 41).*

## **Claim 4 (Currently Amended)**

The rejection of base claim 1 is incorporated. Schulhof further discloses *wherein said step of transmitting further comprises: grouping content items with a count greater than or equal to a second predetermined access count ~~number~~ into a transmit group (see at least 10:42 – 11:41).*

**Claim 5 (Currently Amended)**

Schulhof discloses *a method for optimizing transmit bandwidth utilization in a broadband transmission system employing a content item list comprising:*

*receiving requests on an upstream path of said broadband transmission system for transmission of a plurality of content items (see at least 6:24-40; 7:34-53);*

*adding one content item of said plurality of content items to said content item list if said one content item is not in said content item list (see at least 10:42 – 11:41);*

*determining a rate of request for each content item contained in said content item list; deleting content items from said content list for which the number of requests during a predefined time are less than or equal to a predefined rate of request (see at least 10:42 – 11:41); and*

*transmitting content items in said content item list (see at least 10:42 – 11:41); and  
broadcasting the transmitted content items to a downstream requesting transceiver (see at least 10:52 – 11:41).*

**Claim 6**

The rejection of base claim 5 is incorporated. Schulhof further discloses *wherein said step of transmitting further comprises: transmitting content items with a higher rate of request more frequently than content items with a lower rate of request (see at least 11:16-41).*

**Claim 7**

Rejections of base claim 5 and intervening claim 6 are incorporated. Schulhof further discloses *wherein said step of transmitting further comprises: grouping of a plurality of said content items into a transmit package wherein said transmit package is of a predetermined maximum size (see at least 10:66 – 11:5).*

### Claim 8

Rejections of base claim 5 and intervening claim 6 are incorporated. Schulhof further discloses *merging said content items with other transmitted data* (see at least 11:1-41).

### Claim 9 (Currently Amended)

Schulhof discloses *a system for optimizing bandwidth utilization in a broadband transmission system comprising:*

*a first database containing a plurality of content items* (see at least FIG. 1, databases 14, 15, 16, 18);

*a second database containing user request information for said content items* (see at least FIG. 1, bins in the Information Request Manager software);

*a transmit unit* (see at least FIG. 1, device 26);

*a server computer* (see at least FIG. 1, system 10); and

*a software program* (see at least (see at least FIG. 1, e.g., the Information Request Manager software) *that processes said request information received across said broadband transmission system and determines a rate of request for each content item of said plurality of content items in said first database and establishes a frequency of transmission for each content item of said plurality of content items in said first database responsive to said rate of request for each content item of said plurality of content items in said first database* (see at least 10:35 – 11:41); and

*broadcasting the transmitted content items via the transmit unit to a downstream requesting transceiver display* (see at least 10:52 – 11:41).

### Claim 10

The rejection of base claim 9 is incorporated. Schulhof further discloses *wherein said transmit unit is a television transmitter* (see at least FIG.1, device 28).

**Claim 11**

The rejection of base claim 9 is incorporated. Schulhof further discloses *wherein said transmit unit is a server computer connected to a network* (see at least FIG. 1, system 10).

**Claim 12**

The rejection of base claim 9 is incorporated. Schulhof further discloses *a third database containing only those of said content items corresponding to said user request information for said content items* (see at least 10:35 – 11:41, e.g., various bins in the Information Request Manager).

**Claim 13 (Currently Amended)**

The rejection of base claim 9 is incorporated. Shulhof further discloses *wherein said frequency ~~rate~~ of transmission is further responsive to available bandwidth for content item broadcast* (see at least 11:10-41).

**Claim 14 (Currently Amended)**

The rejection of base claim 9 is incorporated. Shulhof further discloses *wherein said frequency ~~rate~~ of transmission is further responsive to duration of each content item of said plurality of content items in said first database* (see at least 11:10-41).

**Claim 15 (Currently Amended)**

Shulhof discloses *a method for managing information transmission in a broadband transmission system comprising:*



*receiving a plurality of requests across said broadband transmission system, each request of said plurality of requests specifying a program and content element of said program wherein said plurality of requests include a plurality of different programs (see at least 10:35 – 11:41);*

*determining a rate of request for each program of said plurality of different programs (see at least 10:35 – 11:41);*

*determining a rate of request for each content element for each program of said plurality of different programs (see at least 10:35 – 11:41);*

*establishing a broadcast schedule for at least two programs of said plurality of different programs wherein said broadcast schedule is responsive ~~response~~ to said rate of request for said each program and each program of said at least two programs contains at least one content element, the selection thereof responsive to said rate of request for each content element for each program (see at least 10:35 – 11:41); and*

*broadcasting the transmitted content items to a downstream requesting transceiver display (see at least 10:52 – 11:41).*

### ***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP §.706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from

the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hoang-Vu "Antony" Nguyen-Ba whose telephone number is (571) 272-3701. The examiner can normally be reached on Tuesday-Friday from 7:00 am to 5:30 pm.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, John Miller can be reached at (571) 272-7353.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC 2600 Group receptionist (571) 272-2600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).



October 19, 2007

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